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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

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6 teamLab Inc., a Japanese corporation,

Case No. 2:23-cv-01956-JAD-DJA

7 Plaintiff,

**Order**

8 v.

9 Arte Museum LV, LLC, a Delaware limited  
10 liability company; D'Strict Holdings, Inc., a  
11 Delaware corporation; and D'Strict Korea,  
12 Inc., a Korean corporation,

Defendants.

13 Before the Court is the parties' stipulated protective order. (ECF No. 33). The parties  
14 request that the Court enter a protective order to govern their exchange of confidential  
15 information. However, the parties fail to state the governing standard for filing documents under  
16 seal with the Court. This order reminds counsel that there is a presumption of public access to  
17 judicial files and records. A party seeking to file a confidential document under seal must file a  
18 motion to seal and must comply with the Ninth Circuit's directives in *Kamakana v. City and*  
19 *County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) and *Center for Auto Safety v. Chrysler Group,*  
20 *LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016).

21 **IT IS THEREFORE ORDERED** that the parties' stipulated protective order (ECF No.  
22 33) is **granted subject to the following modifications:**

- 23 • The Court has adopted electronic filing procedures. Attorneys must file  
24 documents under seal using the Court's electronic filing procedures. *See* Local  
25 Rule IA 10-5. Papers filed with the Court under seal must be accompanied with a  
26 concurrently-filed motion for leave to file those documents under seal. *See* Local  
27 Rule IA 10-5(a). **This provision specifically modifies Section 15 in the parties'**  
28 **stipulation. (ECF No. 33 at 8).**

- 1           • The Court declines to adopt the parties’ proposal in Section 8 of their stipulation  
2           that the Court apply the same procedures for designating hearing and trial  
3           testimony confidential as designating deposition testimony confidential. **Section 8**  
4           **is specifically modified to apply only to deposition testimony. (ECF No. 33 at**  
5           **4-5).** If the parties wish to designate hearing or trial testimony as confidential  
6           under the terms of their protective order, they may file or make the appropriate  
7           motion at that time.
- 8           • The Court has approved the instant protective order to facilitate discovery  
9           exchanges, but there has been no showing, and the Court has not found, that any  
10          specific documents are secret or confidential. The parties have not provided  
11          specific facts supported by declarations or concrete examples to establish that a  
12          protective order is required to protect any specific trade secret or other confidential  
13          information pursuant to Rule 26(c) or that disclosure would cause an identifiable  
14          and significant harm.
- 15          • All motions to seal shall address the standard articulated in *Ctr. for Auto Safety*  
16          and explain why that standard has been met. 809 F.3d at 1097.
- 17          • Specifically, a party seeking to seal judicial records bears the burden of meeting  
18          the “compelling reasons” standard, as previously articulated in *Kamakana*. 447  
19          F.3d 1172. Under the compelling reasons standard, “a court may seal records only  
20          when it finds ‘a compelling reason and articulate[s] the factual basis for its ruling,  
21          without relying on hypothesis or conjecture.’” *Ctr. for Auto Safety*, 809 F.3d at  
22          1097. (quoting *Kamakana*, 447 F.3d at 1179). “The court must then  
23          ‘conscientiously balance[ ] the competing interests of the public and the party who  
24          seeks to keep certain judicial records secret.’” *Ctr. for Auto Safety*, 809 F.3d at  
25          1097.
- 26          • There is an exception to the compelling reasons standard where a party may satisfy  
27          the less exacting “good cause” standard for sealed materials attached to a  
28          discovery motion unrelated to the merits of the case. *Id.* “The good cause

1 language comes from Rule 26(c)(1), which governs the issuance of protective  
2 orders in the discovery process: “The court may, for good cause, issue an order to  
3 protect a party or person from annoyance, embarrassment, oppression, or undue  
4 burden or expense.” *Id.* (citing Fed.R.Civ.P. 26(c)). “For good cause to exist, the  
5 party seeking protection bears the burden of showing specific prejudice or harm  
6 will result if no protective order is granted.” *Phillips v. General Motors*, 307 F.3d  
7 1206, 1210-11 (9th Cir. 2002).

- 8 • The labels of “dispositive” and “nondispositive” will not be the determinative  
9 factor for deciding which test to apply because the focal consideration is “whether  
10 the motion is more than tangentially related to the merits of a case.” *Ctr. for Auto*  
11 *Safety*, 809 F.3d at 1101.
- 12 • The fact that the Court has entered the instant stipulated protective order and that a  
13 party has designated a document as confidential pursuant to that protective order  
14 does not, standing alone, establish sufficient grounds to seal a filed document. *See*  
15 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir. 2003); *see*  
16 *also Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). If  
17 the sole ground for a motion to seal is that the opposing party (or non-party) has  
18 designated a document as confidential, the designator shall file (within seven days  
19 of the filing of the motion to seal) either (1) a declaration establishing sufficient  
20 justification for sealing each document at issue or (2) a notice of withdrawal of the  
21 designation(s) and consent to unsealing. If neither filing is made, the Court may  
22 order the document(s) unsealed without further notice.

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- To the extent any aspect of the stipulated protective order may conflict with this order or Local Rule IA 10-5, that aspect of the stipulated protective order is hereby superseded with this order.

IT IS SO ORDERED.

DATED: June 10, 2024



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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE